

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

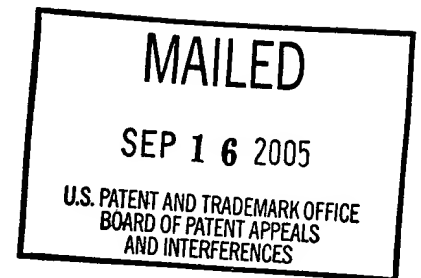
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN NEWMAN, EUGENE J. PETERSON,
and DANIEL M. OBERROTMAN

Appeal No. 2005-2053
Application No. 09/407,531

ON BRIEF



Before KRASS, JERRY SMITH, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-3, 8, 9, 14, 15, and 19-31, which are all of the claims pending in the present application.

The disclosed invention relates to a method and system for providing early deployment releases of a software system. The early deployment releases contain support for new features and

platforms and are generated on a regular recurring basis for a fixed number of cycles. More particularly, a special early development branch of the operating source code file is generated, and pre-tested modules reflecting support for the new features and platforms are incorporated into the early development branch and tested.

Representative claim 1 is reproduced as follows:

1. A release control method for providing early deployment releases of a software system, the early deployment releases containing support for new features and platforms, the method comprising the steps of:
 - a. providing an early development branch of the software system that is designated for incorporation of one or more software modules providing support for new features and platforms;
 - b. receiving, from a plurality of integration units, a plurality of pre-tested software modules, wherein each of the pre-tested software modules comprises one or more new features or supports one or more new platforms;
 - c. committing the pre-tested software modules for new features and platforms into the early development branch; and
 - d. using the early development branch, generating a new early development release containing pre-tested software modules for new features and platforms.

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The Examiner relies on the following prior art:

Hopwood et al. (Hopwood)	6,223,343	Apr. 24, 2001
		(filed Apr. 03, 1998)

Claims 1-3, 8, 9, 14, 15, and 19-31, all of the appealed claims, stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Hopwood.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs¹ and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of anticipation relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the Hopwood reference fully meets the invention as set forth

¹ The Appeal Brief was filed February 17, 2004. In response to the Examiner's Answer mailed July 14, 2004, a Reply Brief was filed September 17, 2004, which was acknowledged and entered by the Examiner as indicated in the communication dated December 22, 2004.

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in claims 1, 2, 8, 14, and 15. We reach the opposite conclusion with respect to claims 3, 9, and 19-31. Accordingly, we affirm-in-part.

Appellants' arguments are organized according to a suggested grouping of claims indicated at page 7 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

At the outset, we note that it is well settled that anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

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With respect to independent claim 1, the representative claim for Appellants' first suggested grouping (including claims 1, 2, and 8), the Examiner indicates (Answer, pages 3 and 4) how the various limitations in claim 1 are read on the disclosure of Hopwood. In particular, the Examiner points to the description in Hopwood of the developer branch 90, 96, 104, the BLDISS branch (column 2, lines 9-25, column 3, lines 28-40, and column 8, lines 40-46), the issuance processor (column 3, lines 60-67), and the Issuance Control Member (column 8, lines 40-46).

In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of anticipation. The burden is, therefore, upon Appellants to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived (see 37 CFR § 41.37(c)(1)(vii)).

Appellants' arguments in response assert that the Examiner has not shown how each of the claimed features are present in the disclosure of Hopwood so as to establish a case of anticipation.

Appellants' assertions (Brief, pages 8-11; Reply Brief, pages 2 and 3) focus on the contention that, in contrast to the claimed invention, the system of Hopwood does not provide for the designation of an early development branch which incorporates software modules that provide support for **"both new features and new platforms."** According to Appellants (Brief, page 10), the fact that Hopwood's Revision Management System (RMS) may have the ability to execute on different platforms does not necessarily mean that the RMS system "manages revisions to software modules that support different platforms." In a related argument (Reply Brief, page 2), Appellants contend that, even if it can be assumed that Hopwood's software modules provide support for "new features and platforms," there is no disclosure in Hopwood that such "new features and platforms" are ever "incorporated into an early development branch."

After careful review of the Hopwood reference in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer. We find no error in the Examiner's finding (Answer, page 6) that new programs and new platforms are the modules which are changed via Hopwood's RMS system, with the newly developed and tested program modules being implemented by the developer branch (including the

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BLDISS element). Further, we agree with the Examiner (id.) that Hopwood's definition of "element" at column 25, lines 33-43 and column 27, lines 48-50 indicates that program (element) modules are being changed and that these elements include programs and platforms (operating systems).

We further find to be persuasive, Appellants' arguments to the contrary notwithstanding, the Examiner's assertion that in Hopwood, as discussed for example, at column 11, lines 1-12, changes made to elements provide support for new platforms. We also agree that this position of the Examiner is buttressed by the disclosure of Hopwood (column 13, lines 1-8) which indicates that element changes are tracked throughout development "regardless of the strategic platform the element is to be installed on."

In view of the above discussion, since the Examiner's prima facie case of anticipation has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 102(e) rejection of representative claim 1, as well as claims 2 and 8 which fall with claim 1, is sustained.

Turning to a consideration of the Examiner's 35 U.S.C. § 102(e) rejection of independent claim 14, and dependent claim 15 not separately argued by Appellants, we sustain this rejection

as well. Appellants' arguments in response assert the alleged distinction that, unlike in Hopwood, the claimed invention involves a selection of features to be tested based on a scheduled release date. Appellants' arguments seem to suggest that claim 14 requires the determination of a software release date and the selection of a quantity of features to be tested which will allow the release by the certain date.

We do not find that the language of claim 14 requires such an interpretation. As asserted by the Examiner, the whole purpose of the system described by Hopwood is to test software changes before they are released. Further, the Work Group Manager disclosed by Hopwood allows the selection of elements (software modules) to be revised (Hopwood, column 19, lines 19-48). In our opinion, since Hopwood discloses the selection of features to be included in a revised software release, and Hopwood's RMS system is designed to test changes before release, a quantity of selected features to be tested will allow a scheduled release to be completed at a required time.

We next consider the Examiner's 35 U.S.C. § 102(e) rejection of claims 3, 9, and 19-31 based on Hopwood. We note that, while we found Appellants' arguments to be unpersuasive with respect to the Examiner's rejection of claims 1, 2, 8, 14, and 15 discussed

supra, we reach the opposite conclusion with respect to claims 3, 9, and 19-31. As pointed out by Appellants (Brief, pages 11 and 12), each of these claims requires that **"pre-tested software modules be received at a pre-integration branch** that is separate from the early development branch." In addressing the language of these claims, the Examiner directs attention (Answer, pages 4, 7, and 8) to the sub-repository 106 illustrated in Hopwood's Figure 6 and discussed at column 15, lines 4-52 of Hopwood.

After reviewing the arguments of record, however, we agree with Appellants that, to whatever extent the sub-repository 106 in Hopwood may be considered a pre-integration branch, there is no basis for the Examiner's conclusion that Hopwood's sub-repository contains pre-tested software modules. Although the Examiner offers a differing interpretation of Hopwood's description of the sub-repository as containing "application and business metadata," a review of the entirety of the disclosure of Hopwood lends support to Appellants' assertion that Hopwood's sub-repository contains only metadata.

In other words, the term metadata in the phrase "application and business metadata" must properly be interpreted as modifying both "application" and "business." For example, Hopwood's own definition of "repository," of which the sub-repository is a

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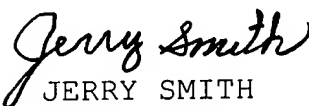

subset, indicates that such repository "centralizes all information about the business and the applications which support it," i.e., data about the business and the supporting application data or, in other words, "business and application metadata." Accordingly, since all of the claim limitations are not taught or suggested by the applied Hopwood reference, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of claims 3, 9, and 19-31.

In summary, with respect to the Examiner's 35 U.S.C. § 102(e) rejection of appealed claims 1-3, 8, 9, 14, 15, and 19-31, we have sustained the rejection of claims 1, 2, 8, 14, and 15, but have not sustained the rejection of claims 3, 9, and 19-31. Therefore, the Examiner's decision rejecting claims 1-3, 8, 9, 14, 15, and 19-31 is affirmed-in-part.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a)(1)(iv) (effective September 13, 2004).

AFFIRMED-IN-PART


ERROL A. KRASS)
Administrative Patent Judge)
)

JERRY SMITH)
Administrative Patent Judge)
)

JOSEPH F. RUGGIERO)
Administrative Patent Judge)

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